IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 629 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MAGANLAL SHIVABHAI BAVARVA

Appearance:

1. Special Civil Application No. 629 of 1994

MR HS MUNSHAW for Petitioner No. 1

MR DM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2001

ORAL JUDGEMENT

This is a petition under Article 227 of the Constitution filed by the Gujarat State Road Transport Corporation challenging the judgment and award dated 29.9.1993 passed by the Labour Court, Rajkot in Reference (LCR) No. 109 of 1992 whereby the Labour Court set aside

the dismissal order dated 17.7.1991 and directed the Corporation to reinstate the respondent to the post of conductor with continuity of service and with full backwages from the date of dismissal till the date of reinstatement. However, the Labour Court imposed a penalty of stoppage of one increment without future effect.

2. The learned counsel for the petitioner-Corporation has submitted that when the Labour Court found that the respondent had committed some misconduct which warranted the penalty of stoppage of one increment, the Labour Court ought not to have interfered with the order of penalty and in any case the Labour Court ought not to have awarded full backwages to the respondent when he had not issued tickets to as many as 11 passengers.

3. On the other hand, Mr DM Thakkar, learned counsel for the respondent-conductor submits that in fact the respondent had not committed any misconduct as the bus was already late by 45 minutes since it was detained at the workshop; there were 95 passengers and only 11 passengers were not issued tickets and that there was no allegation of any dishonesty or misappropriation. Mr Thakkar further submits that the penalty of stoppage of one increment without future effect was adequate looking to the gravity of the alleged misconduct.

4. Having heard the learned counsel for the parties, it appears to the Court that when the Labour Court did hold that the respondent had committed some misconduct which warranted the penalty of stoppage of one increment without future effect, the respondent was atleast guilty of dereliction of duty in not issuing tickets to as many as 11 passengers when the bus had already travelled a distance of 20 kms. from the place where the passengers had boarded the bus. However, the only redeeming feature in favour of the respondent is that the Corporation has not alleged any dishonesty or misappropriation on the part of the respondent.

5. Looking to the peculiar facts and circumstances of the case and also considering the fact that during a period of two years, the respondent might have been employed elsewhere though it would be difficult for the employer to prove any such fact, it would be just and proper if the award passed by the Labour Court is modified to the extent that the respondent-workman shall be paid 50% of backwages for the period from the date of dismissal i.e. 17.9.1991 till the date of reinstatement.

However, the direction given by the Labour Court for reinstatement with continuity of service is not disturbed nor is the order passed by the Labour Court for imposing a penalty of stoppage of one increment without future effect disturbed. In other words, the said penalty shall operate.

6. Since there was interim stay against the payment of backwages during pendency of the petition, the Corporation has not paid any backwages to the respondent. In this view of the matter, the petitioner-Corporation shall pay the respondent-workman 50% of backwages as directed above by 15.1.2002.

7. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)
sundar/-